IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3529 of 2007()

CRA.459/2004 of ADDL. DISTRICT & SESSIONS FAST TRACK COURT (ADHOC-II), KOZHIKODE.
CC.50/2001 of JUDL. MAGISTRATE OF FIRST CLASS-II, PERAMBRA

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REVN. PETITIONER: APPELLANTS/ACCUSED:

1. A.C. BALAKRISHNAN, S/O. KANNAN,
ARANDACHALIL HOUSE, KARAYAD AMSOM, EAKKATTUR.

2. SHIBU, S/O. GOPALAN,
UTTAPPALIL HOUSE, KARAYAD AMSOM, EAKKATTUR.

3. KARUNAN, S/O. KELAPPAN,
VADAKKEPOYILANGA, KARAYAD AMSOM, EAKKATTUR.

4. GIREESAN, S/O. KELAPPAN,
PARASSERYKUNI HOUSE, KARAYAD AMSOM, EAKKATTUR.

5. SADANANDAN, S/O. V.K.KUNHIKANNAN,
KUTTIKANDY MEETHAL, KARAYAD AMSOM, EAKKATTUR.

6. ASHOKAN, S/O. CHATHUKUTTY,
THAREMMAL HOUSE, KARAYAD AMSOM, EAKKATTUR.

7. KUNHIKELAPPAN, S/O. KUNHIRAMAN,
POOLAYULLAPARAMBIL HOUSE, KARAYAD AMSOM, EAKKATTUR

8. RAVEENDRAN, S/O. KUNHIRAMAN,
KANHIROTTU MEETHAL, KARAYAD AMSOM, EAKKATTUR.

9. BIJU, S/O. KUNHIKANNAN,
THARAMAL HOUSE, KARAYAD AMSOM, EAKKATTUR.

10. LAKSHMANAN, S/O. DAMODHARAN,
THURUTHIKUNNUMMAL, KARAYAD AMSOM, EAKKATTUR.

11. KUNHIKELAPPAN, S/O. KUNHICHOYI,
KARAYAD AMSOM, EAKKATTUR.

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. NO. 3529 of 2007

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Dated this the 11th day of December, 2007.

ORDER

The revision petitioners, who are the accused Nos. 1 to 11 in C.C.No. 50/2001 on the file of the Judicial First Class Magistrate-II, Perambra for offences punishable under Sections 143, 147, 148, 324, 427 r/w Section 149 IPC, challenges the conviction entered and the sentence passed against them for offences punishable under Sections 143, 147, 148, 324, 427 r/w Section 149 IPC.

2. The case of the prosecution can be summarised as follows:

On 30.07.2000 at about 10.45. p.m. the 11 accused persons and others formed themselves into an unlawful assembly and had barged on to the stage where a public meeting sponsored by the U.D.F was going on. They pelted stones at the persons on and off the stage and also at the listeners. The also committed mischief by causing extensive damage to the articles including music system, tables, tube lights, party flags etc. causing a total loss of Rs.20,000/-. They committed rioting

armed with deadly weapons like stone, wooden sticks etc. and voluntarily caused hurt to PWs 1 to 7 by beating them and pelting stones at them. The accused have thereby committed offences punishable under Sections 143, 147, 148, 324, 427 r/w Section 149 IPC.

3. On the accused pleading not guilty to the charge framed against them by the trial court for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 13 witnesses as PWs 1 to 13 and got marked 10 documents as Exts.P1 to P10 and 6 material objects as MOs 1 to 6.

4. After the close of the prosecution evidence, the accused were questioned under Section 313(1)(b) Cr.P.C with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They examined three witnesses as DWs 1 to 3 and got marked six documents as Exts.D1 to D6.

5. The learned Magistrate after trial, as per judgment dated 29.06.2004 found the revision petitioners guilty of the offences punishable under Sections 143, 147, 148, 324, 427 r/w Section

149 IPC and awarded sentence of imprisonment for various periods apart from fine.

6. Aggrieved by the conviction entered and the sentence passed against them, the revision petitioners preferred an appeal before the Sessions Court, Kozhikode as Crl.Appeal No. 459/2004. As per judgment dated 14.09.2007, the Additional Sessions Judge, Adhoc-II modified the conviction and sentence and the revision petitioners were convicted and sentenced to simple imprisonment for six months for the offences under Sections 147, 148, 324, 427 r/w Section 149 IPC and simple imprisonment for three months for the offence under Section 143 IPC.

7. Even though the learned counsel appearing for the revision petitioners assailed the conviction entered and the sentence passed against them, in as much as the conviction had been recorded after a careful evaluation of the oral and documentary evidence in the case, this court sitting in revision will be loath to interfere with the said conviction, which is accordingly confirmed.

8. What now survives for consideration is the question of adequacy of sentence. It is true that it was a sudden and pre-planned attack on the de facto complainant and others in the course of a political meeting. There was a counter case also arising from the same occurrence in which the sister of the 6th accused was the de facto complainant. It is now admitted that the said counter case has ended in acquittal. Merely because there was a counter case arising from the same occurrence, it cannot be taken as a proposition of law that one of the two versions is true or vice versa. On the facts and circumstances of the case, I am satisfied that the petitioners do not deserve penal servitude by way of incarceration for the conviction recorded against them. I am of the view that an appropriate fine and compensation therefrom can meet the ends of justice. Accordingly, for the conviction under Section 143 and 323 IPC, each of the revision petitioners is sentenced to pay a fine of Rs.500/- (Rupees five hundred only) each and on default to pay the fine, to suffer simple imprisonment for 20 days. For the conviction under Section 147 IPC, each of the revision petitioners is sentenced to pay a fine of Rs.1000/- (Rupees one thousand

only) each and on default to pay the fine, to suffer simple imprisonment for one month. For their conviction under Section 427 IPC, each of the revision petitioners is sentenced to pay a fine of Rs.3000/- and on default to pay the fine, to suffer simple imprisonment for two months. From out of the fine amount, a sum of Rs.10,000/- (Rupees ten thousand only) shall be paid to PW10 (the owner of the sound and light and who sustained loss due to damage of equipment and fixtures) and PWs 1 to 7 who sustained injuries shall be paid at the rate of Rs.3000/- each as compensation under Section 357(1) Cr.P.C. The fine amount shall be deposited before the trial court within 30 days from today failing which the defaulting accused shall suffer the default sentence as indicated above.

In the result the revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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